

Joel D. Odou  
Nevada Bar No. 7468  
Susana Santana  
Nevada Bar No. 13753  
Dane W. Smith  
Nevada Bar No. 16002  
**WOOD, SMITH, HENNING & BERMAN LLP**  
2881 Business Park Court, Suite 200  
Las Vegas, Nevada 89128-9020  
Phone: 702 251 4100 ♦ Fax: 702 251 5405  
[jodou@wshblaw.com](mailto:jodou@wshblaw.com)  
[ssantana@wshblaw.com](mailto:ssantana@wshblaw.com)  
[dsmith@wshblaw.com](mailto:dsmith@wshblaw.com)

Attorneys for Defendants Postmates, LLC and  
Postmates, Inc.

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOVANNI OSEGUERA,

Plaintiff,

v.

POSTMATES, LLC; POSTMATES, INC.;  
TIMOTHY ALLEN VANDYKE; and DOES  
1 through 10, inclusive; and ROE  
CORPORATIONS 1 - 10, inclusive,

Defendants.

Case No.:

**DEFENDANTS POSTMATES, LLC AND  
POSTMATES, INC.'S PETITION FOR  
REMOVAL**

Trial Date: None Set

COME NOW, Petitioners/Defendants POSTMATES, LLC and POSTMATES, INC.  
("Defendants"), by and through its attorneys, the law firm of WOOD, SMITH, HENNING &  
BERMAN, LLP, and hereby remove the above-captioned action currently pending in the District  
Court of Clark County, Nevada to the United States District Court for the District of Nevada.

///

///

///

///

///

**I.****BACKGROUND**

1. On or about December 6, 2021, Plaintiff filed a Complaint in the Eighth Judicial District Court of Clark County, Nevada (hereinafter the "State Court Action"). The State Court Action was assigned Docket No. A-21-845018-C.<sup>1</sup>

2. On or about January 14, 2022, Defendant Postmates, LLC accepted service of the Plaintiff's Complaint in the State Court Action.<sup>2</sup>

3. On or about January 14, 2022, Defendant Postmates, Inc. accepted service of the Plaintiff's Complaint in the State Court Action.

3. POSTMATES, LLC; POSTMATES, INC; and TIMOTHY ALLEN VANDYKE; are named as Defendants in the Complaint. The Complaint purports to assert causes of action sounding in (1) Negligence<sup>3</sup> and (2) Negligent hiring/training/supervision/retention.<sup>4</sup>

4. In the Complaint, Plaintiff alleges injuries as a result of a motor vehicle accident that occurred on or about November 6, 2019.<sup>5</sup>

5. Plaintiff seeks general and special damages in excess of \$15,000.00; damages for costs of medical care and treatment and costs incidental therein in excess of \$15,000.00 and to date known to be \$59,244.13 and increasing per Plaintiff counsel representation; damages and costs of future medical care at a cost of \$50,000.00/year, including future lumbar surgery estimated at a cost of \$250,000.00, and treatment and costs incident thereto, pre-judgment interest, attorney's fees and costs.<sup>6</sup> In addition, Plaintiff claims that as a result of the collision, that she suffered "serious, deliberating, and permanent injuries."<sup>7</sup>

6. Pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1441(a), this Notice of Removal is being filed in the United States District Court for the District of Nevada, which is part of the "district and

///

<sup>1</sup> **Exhibit "A"**: Plaintiff's Complaint.

<sup>2</sup> **Exhibit "B"**: Service of Process Transmittal stamped January 14, 2022.

<sup>3</sup> See Ex. "A" generally.

<sup>4</sup> *Id.* at p. 5-6.

<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *Id.* at pp. 6-7.

<sup>7</sup> *Id.* at pp. 4-5.

1 division" embracing the place where this action was filed – Clark County, Nevada. Thus, venue is  
2 proper.

3 7. Pursuant to 28 U.S.C. §1446(d), a Notice of Removal to All Adverse Parties will be  
4 promptly served upon Plaintiff's Counsel and filed with the Clerk of the District Court of Clark  
5 County, Nevada.<sup>8</sup>

6 8. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely filed.  
7 Defendants filed this Petition for Removal within thirty (30) days after service of the initial pleading  
8 setting forth the claims for relief upon which Plaintiff's State Court Action is based. Defendants  
9 have not pled, answered, or otherwise appeared in the State Court Action.

## 10 II.

### 11 STATUTORY REQUIREMENTS: 28 U.S.C. §1332

12 8. Diversity Jurisdiction. This Court has diversity jurisdiction of this action pursuant to  
13 28 U.S.C. §1332.

14 9. Plaintiff alleges in his Complaint that he is a resident of the state of Nevada.<sup>9</sup>

15 10. Defendant, Postmates, LLC, is a non-governmental limited liability company,  
16 specifically a company organized and existing under the laws of the State of Delaware. Plaintiff  
17 alleges in his Complaint that Postmates, LLC is a foreign-limited liability company, operating and  
18 doing business within the state of Nevada.<sup>10</sup>

19 11. Defendant, Postmates, Inc. is a corporation with a merged dissolved status in Nevada,  
20 incorporated under the laws of the State of Delaware. Plaintiff alleges in his Complaint that  
21 Postmates, Inc is a foreign corporation, operating and doing business within the state of Nevada,  
22 County of Clark.<sup>11</sup>

23 12. Timothy Allen Vandyke, is a resident of the State of Pennsylvania. However,  
24 Plaintiff alleges in his Complaint that Mr. Vandyke is a resident of the state of Nevada.<sup>12</sup>

25 13. Complete Diversity. Diversity, therefore, exists between Plaintiff and all Defendants

26 <sup>8</sup> **Exhibit "C"**: Notice of Filing Petition for Removal to be filed concurrently with this Petition.

27 <sup>9</sup> See Ex. "A" at p. 1.

28 <sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

as Plaintiff is a resident of the state of Nevada and all Defendants reside in other states (i.e. Postmates, LLC is a Delaware Limited-Liability Company, Postmates, Inc, is a Delaware corporation, and Mr. Vandyke is a resident of the state of Pennsylvania).

14. Amount in Controversy. Plaintiff seeks general and special damages in excess of \$15,000.00; damages for costs of medical care and treatment and costs incidental therein in excess of \$15,000.00 and to date known to be \$59,244.13 and increasing per Plaintiff counsel representation; damages and costs of future medical care at a cost of \$50,000.00/year, including future lumbar surgery estimated at a cost of \$250,000.00, and treatment and costs incident thereto, pre-judgment interest, attorney's fees and costs.<sup>13</sup> In addition, Plaintiff claims that as a result of the collision, that she suffered “serious, deliberating, and permanent injuries.”<sup>14</sup>

15. Therefore, this Court has jurisdiction of this action pursuant to 28 U.S.C. §1332 since there is complete diversity and the alleged amount in controversy is in excess of \$75,000.00.

### III.

### CONCLUSION

Based on the forgoing, Petitioners/Defendants respectfully request this action be removed to this Court, that all further proceedings in the State Court be stayed, and that Petitioners/Defendants obtain all additional relief to which they are entitled.

DATED: February 4, 2022

WOOD, SMITH, HENNING & BERMAN LLP

By: /s/ Susana Santana

JOEL D. ODOU

Nevada Bar No. 7468

SUSANA SANTANA

Nevada Bar No. 13753

DANE W. SMITH

Nevada Bar No. 16002

Attorneys for Defendants Postmates, LLC and  
Postmates, Inc.

<sup>13</sup> *Id.* at pp. 6-7.

<sup>14</sup> *Id.* at pp. 4-5.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of February, 2022, a true and correct copy of **DEFENDANT POSTMATES, LLC AND POSTMATES, INC.'S NOTICE OF REMOVAL** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By /s/ Johana Whitbeck  
An Employee of  
WOOD, SMITH, HENNING & BERMAN LLP

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
2881 BUSINESS PARK COURT, SUITE 200  
LAS VEGAS, NEVADA 89128-9020  
TELEPHONE 702 251 4100 ♦ FAX 702 251 5405

**OSEGUERA v. POSTMATES, ET AL.**

**Case No.: 2:21-cv-**

**DEFENDANTS POSTMATES, LLC AND POSTMATES, INC.'S**  
**PETITION FOR REMOVAL**

**INDEX**

<b><u>EXHIBIT</u></b>	<b><u>DOCUMENT</u></b>
<b>A.</b>	Plaintiff's Complaint
<b>B.</b>	Service of Process Transmittal Stamped January 14, 2022
<b>C.</b>	Notice of Filing Petition for Removal to be filed concurrently with this Petition.